IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8837 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

SHANKARBHAI MOTIBHAI PARMAR & ORS. - Petitioner(s)
Versus
UNION OF INDIA & ORS. - Respondent(s)

==========

Appearance :
Shri Harshadray A. Dave for Petitioner(s) : 1 - 22.
None for Respondent(s) : 1.
Ms. Manisha Narsinghani for Shri P.C. Kavina for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/03/2007

ORAL JUDGMENT

The petitioners, being aggrieved by the Order dated 1st April, 1989 passed in Regular Civil Appeal No.56 of 1988 by the learned Assistant Judge, Ahmedabad (Rural) confirming the order passed by the

Estate Officer under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971, directing eviction of the petitioners from the property over which, as alleged, the petitioners had made certain encroachments. The two authorities have held that the land in dispute, over which the petitioners had raised certain construction, in fact, belonged to the respondents and the petitioners, without any authority of law, had made certain construction and were occupying the same.

2. Shri Dave, learned Counsel for the petitioners, submits that the notice dated 24th February, 1988 was incomplete as it did not refer to the ground for which the petitioners could be said to be in illegal occupation. His further submission is that as the details of the property have also not been given, the petitioners had suffered prejudice to their defence. According to him, adjoining the retaining wall of the river - Sabarmati, number of persons have made encroachment and are occupying the premises, therefore, specific details of the house in possession of the petitioners ought to have been given. Last of his submission is that in case of number of others, the learned Appellate Court, after setting aside the eviction order, required the Railway Administration/Union of India to regularise the encroachment and as the same has been done, the petitioners may not be given step-motherly treatment. His submission is that the Railway Administration, instead of evicting the petitioners, should direct regularisation of the petitioners' occupation.

3. Annexure-D are the notices issued by the authorities time and again. True it is, that the notice dated 24th February, 1988 does not give the grounds on which the petitioners were sought to be evicted, but, the said notice refers to the earlier Notice No.5/CO/87-88/1235. In the

said notice dated 3rd February, 1988, it has been clearly observed that, "unauthorised construction of house & occupation of those on Government land". The details of the house and the property of the Government are also given, which reads: "Land measuring 10' x 15' Approx. sq. ft. In GLR Survey No. 65/586", and further details are shown as "at retaining wall River Sabarmati". After going through the notices dated 3rd February, 1988 and 2nd January, 1988, I am unable to hold that the respondents did not give proper details of the property or did not provide proper grounds for eviction. On the merits, Shri Dave has not said anything further.

4. So far as his last submission is concerned, in these proceedings, I am afraid, I cannot direct regularisation of the petitioners' occupation even if it is held that number of other encroachments or unauthorised occupations have been regularised. The petitioners, however, shall be free to approach the appropriate Court/Forum for such necessary orders, which may provide them some relief or respite.

5. The petitioners, however, are also permitted to make a representation to the respondents for regularisation of the encroachment. If the representation-cum-request is made to the respondents, then, till final disposal of the said representation, the order of eviction shall remained stayed. If the representation is not made within fifteen days, then, this order/concession shall lose its efficacy. The petition is disposed of with the liberty aforesaid. Rule is discharged. No costs.

[R.S.Garg, J.]

*kamlesh**